

# EXHIBIT

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LYCURGAN INC. DBA  
ARES ARMOR,

Plaintiff,

vs.

B. TODD JONES in his official  
capacity as Head of the San Diego  
Bureau of Alcohol, Tobacco, Firearms  
and Explosives; and DOES 1–10,

Defendants.

CASE NO. 14-CV-1679 JLS (BGS)

**ORDER: (1) DENYING  
PLAINTIFF LYCURGAN, INC.’S  
MOTION FOR NEW TRIAL  
PURSUANT TO FEDERAL  
RULE OF CIVIL PROCEDURE  
59(a); AND (2) GRANTING  
PLAINTIFF LEAVE TO FILE A  
FIRST AMENDED COMPLAINT**

(ECF No. 21)

Presently before the Court is Plaintiff Lycurgan, Inc.’s (“Plaintiff”) Motion for New Trial Pursuant to Federal Rule of Civil Procedure 59(a). (ECF No. 21.) Also before the Court is Defendant’s Response in Opposition to (ECF No. 27) and Plaintiff’s Reply in Support of (ECF No. 30) the Motion for New Trial. Having considered the parties’ arguments and the law, the Court **DENIES** Plaintiff’s Motion for New Trial, but **GRANTS** Plaintiff’s request to file a First Amended Complaint.

**BACKGROUND**

On March 15, 2014, agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) executed a search warrant at Plaintiff’s business, and seized “a

1 large number of polymer castings, among a multitude of other items that are necessary  
 2 for the efficient functioning of the business.” (Motion for New Trial 6,<sup>1</sup> ECF No. 21.)  
 3 On March 27, 2014, the ATF sent Plaintiff a “Notice of Seizure and Administrative  
 4 Forfeiture Proceeding,” informing Plaintiff that the items seized were being held  
 5 pursuant to various U.S. Code sections. (*Id.*) The ATF described the items as  
 6 “receivers;” Plaintiff maintains they are not “receivers” nor “frames,” but rather  
 7 “unfinished polymer lower receivers.” (*Id.*) On April 5, 2014, Plaintiff submitted a  
 8 verified claim contesting the forfeiture. (*Id.* at 7.) On July 3, 2014, the ATF sent  
 9 Plaintiff a statement saying it was no longer pursuing civil forfeiture proceedings, but  
 10 that it would continue to hold the lower receivers as evidence in an ongoing criminal  
 11 investigation. (*Id.*)

12 On July 16, 2014, Plaintiff filed the complaint in this matter seeking return of its  
 13 property pursuant to the Civil Asset Forfeiture Reform Act (“CAFRA”). (ECF No. 1.)  
 14 On September 22, 2014, Defendant filed a Motion to Dismiss for lack of subject matter  
 15 jurisdiction. (ECF No. 7.) On December 17, 2014, the Court granted Defendant’s  
 16 Motion to Dismiss and dismissed Plaintiff’s complaint without prejudice. (ECF No.  
 17 19.) Subsequently, on December 23, 2014, the ATF returned 5,786 lower receivers to  
 18 Plaintiff. (Motion for New Trial 8, ECF No. 21.) Plaintiff maintains that the ATF still  
 19 has “18 of [Plaintiff’s] unfinished polymer lower receivers without explanation.” (*Id.*)  
 20 Rather than filing an amended complaint, on January 14, 2015, Plaintiff filed the  
 21 instant Motion for New Trial.

## 22 LEGAL STANDARD

23 Federal Rule of Civil Procedure 59(a)(1) provides, in pertinent part:

24 **(1) *Grounds for New Trial.*** The court may, on motion, grant a new trial  
 25 on all or some of the issues—and to any party—as follows:

26 **(A)** after a jury trial, for any reason for which a new trial has heretofore

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 28 <sup>1</sup>For ease of reference, all page numbers cited to are the CM/ECF numbers at the top of the page.

11 ANALYSIS

Defendant argues, in contrast, that the Court was aware of and considered the fact that the AFT no longer needed the lower receivers in conjunction with an ongoing criminal investigation in ruling on its Motion to Dismiss. (Resp. in Opp’n 3, ECF No. 27.) Defendant contends, correctly, that the Court granted its Motion to Dismiss not because the items were being held for an ongoing investigation, but because it lacked subject matter jurisdiction pursuant to CAFRA. (*Id.*) Accordingly, Defendant argues, there is no changed circumstances that warrant a new trial and the instant motion should be denied. (*Id.* at 4.)

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1 longer needed the seized items for an ongoing criminal investigation. Further, the  
2 Court's Order on the Motion to Dismiss makes clear that the Court did not base its  
3 decision on whether the seized items would be returned. Rather, the Court found that  
4 because the ATF voluntarily dismissed its forfeiture action, the Court's jurisdiction over  
5 the forfeiture action was divested. (Order 6, ECF No. 19.) The Court went on to explain  
6 that because the ATF was holding the items pursuant to a valid search warrant and in  
7 connection with a then-ongoing investigation, the ATF's continued seizure of the items  
8 was appropriate. While the Court considered the fact that the ATF had another reason  
9 for holding the items, the Court's order focused on the lack of a forfeiture action.

10 Subsequent to the Court's ruling, Defendant returned the large majority of the  
11 seized items.<sup>2</sup> Now, based on Defendant's alleged failure to return 18 lower receivers  
12 and the termination of the ongoing criminal investigation, Plaintiff wishes the Court to  
13 "grant a new trial" on the issue of whether the unreturned items must be returned  
14 pursuant to CAFRA because there is no longer another reason for Defendant to hold the  
15 lower receivers. The new information Plaintiff would like the Court to consider is the  
16 continued seizure of some of the lower receivers in conjunction with the termination of  
17 the criminal investigation.

18 As a preliminary matter, the Court clarifies that there has been no trial in this  
19 case. Plaintiff is essentially asking the Court to reconsider its ruling on Defendant's  
20 Motion to Dismiss based on new information or, in the alternative, grant it leave to file  
21 an amended complaint. Given that the recourse Plaintiff is requesting is the ability to  
22 file an amended complaint, and the fact that Plaintiff's initial complaint was dismissed  
23 without prejudice (*see* ECF No. 19), the Court finds its most appropriate to **DENY**  
24 Plaintiff's Motion for New Trial but permit Plaintiff to file an amended complaint. The  
25 Court cautions Plaintiff to revisit its order granting Defendant's Motion to Dismiss prior  
26 to filing its amended complaint.

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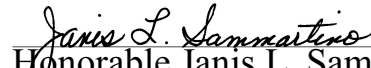
27 <sup>2</sup> Plaintiff states that Defendant has retained 18 lower receivers. (Motion for New Trial  
28 8, ECF No. 21.) Defendant, however, maintains that it has returned all of Plaintiff's property  
that it has in its possession. (Resp. in Opp'n 2, ECF No. 27.)

**CONCLUSION**

Based on the foregoing, the Court **DENIES** Plaintiff's Motion for New Trial. Plaintiff may, however, file an amended complaint within 21 days of the date on which this order is electronically docketed.

**IT IS SO ORDERED.**

DATED: June 11, 2015

  
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Honorable Janis L. Sammartino  
United States District Judge